

ASSEMBLY BILL

No. 1064

Introduced by Assembly Member Garrick

February 27, 2009

An act to amend Sections 17250.30 and 81704 of the Education Code, and to amend Sections 20133, 20175.2, and 20209.7 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1064, as introduced, Garrick. Design-build contracts: labor compliance program: exemptions.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law authorizes school district governing boards, the governing boards of specified community college districts and community college facility construction projects, certain cities, certain counties, and transit operators, to enter into design-build contracts, as specified. Existing law requires awarding bodies entering into design-build contracts under these provisions to establish and enforce a labor compliance program or to contract with a 3rd party to operate a labor compliance program, and exempts from this requirement projects where the awarding body or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

This bill would delete the exemption for those projects from the requirement that the entity establish and enforce a labor compliance program or contract with a 3rd party to operate a labor compliance program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17250.30 of the Education Code is
2 amended to read:
3 17250.30. (a) Any design-build entity that is selected to design
4 and build a project pursuant to this chapter shall possess or obtain
5 sufficient bonding to cover the contract amount for nondesign
6 services, and errors and omissions insurance coverage sufficient
7 to cover all design and architectural services provided in the
8 contract. This chapter does not prohibit a general or engineering
9 contractor from being designated the lead entity on a design-build
10 entity for the purposes of purchasing necessary bonding to cover
11 the activities of the design-build entity.
12 (b) Any payment or performance bond written for the purposes
13 of this chapter shall use a bond form developed by the Department
14 of General Services pursuant to subdivision (g) of Section 14661
15 of the Government Code. The purpose of this subdivision is to
16 promote uniformity of bond forms to be used on school district
17 design-build projects throughout the state.
18 (c) (1) All subcontracts that were not listed by the design-build
19 entity in accordance with Section 17250.25 shall be awarded by
20 the design-build entity.
21 (2) The design-build entity shall do all of the following:
22 (A) Provide public notice of the availability of work to be
23 subcontracted.
24 (B) Provide a fixed date and time on which the subcontracted
25 work will be awarded.
26 (3) Subcontractors bidding on contracts pursuant to this
27 subdivision shall be afforded the protections contained in Chapter
28 4 (commencing with Section 4100) of Part 1 of Division 2 of the
29 Public Contract Code.
30 (4) (A) If the school district elects to award a project pursuant
31 to this section, retention proceeds withheld by the school district
32 from the design-build entity shall not exceed 5 percent if a
33 performance and payment bond, issued by an admitted surety
34 insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the school district and the design-build entity. If the design-build entity provides written notice to ~~any~~ a subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. ~~This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.~~

SEC. 2. Section 81704 of the Education Code is amended to read:

81704. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) (A) If the community college district elects to award a project pursuant to this section, retention proceeds withheld by the community college district from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld ~~may~~ shall not exceed the percentage specified in the contract between the community college district and the design-build entity. If the design-build entity provides written notice to ~~any~~ a subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

1 (5) In accordance with the provisions of applicable state law,
2 the design-build entity may be permitted to substitute securities
3 in lieu of the withholding from progress payments. Substitutions
4 shall be made in accordance with Section 22300 of the Public
5 Contract Code.

6 (d) The community college district shall establish and enforce
7 a labor compliance program containing the requirements outlined
8 in Section 1771.5 of the Labor Code or shall contract with a third
9 party to operate a labor compliance program containing the
10 requirements outlined in Section 1771.5 of the Labor Code. ~~This~~
11 ~~requirement shall not apply to projects where the community~~
12 ~~college district or the design-build entity has entered into a~~
13 ~~collective bargaining agreement that binds all of the contractors~~
14 ~~performing work on the project.~~

15 SEC. 3. Section 20133 of the Public Contract Code is amended
16 to read:

17 20133. (a) A county, with approval of the board of
18 supervisors, may utilize an alternative procedure for bidding on
19 construction projects in the county in excess of two million five
20 hundred thousand dollars (\$2,500,000) and may award the project
21 using either the lowest responsible bidder or by best value.

22 (b) (1) It is the intent of the Legislature to enable counties to
23 utilize design-build for buildings and county sanitation wastewater
24 treatment facilities. It is not the intent of the Legislature to
25 authorize this procedure for other infrastructure, including, but not
26 limited to, streets and highways, public rail transit, or water
27 resources facilities and infrastructures.

28 (2) The Legislature also finds and declares that utilizing a
29 design-build contract requires a clear understanding of the roles
30 and responsibilities of each participant in the design-build process.

31 (3) If the board of supervisors elects to proceed under this
32 section, the board of supervisors shall establish and enforce for
33 design-build projects a labor compliance program containing the
34 requirements outlined in Section 1771.5 of the Labor Code, or it
35 shall contract with a third party to operate a labor compliance
36 program containing the requirements outlined in Section 1771.5
37 of the Labor Code. ~~This requirement shall not apply to any project~~
38 ~~where the county or the design-build entity has entered into any~~
39 ~~collective bargaining agreement or agreements that bind all of the~~
40 ~~contractors performing work on the projects.~~

1 (c) As used in this section:

2 (1) “Best value” means a value determined by objective criteria
3 related to price, features, functions, and life-cycle costs.

4 (2) “Design-build” means a procurement process in which both
5 the design and construction of a project are procured from a single
6 entity.

7 (3) “Design-build entity” means a partnership, corporation, or
8 other legal entity that is able to provide appropriately licensed
9 contracting, architectural, and engineering services as needed
10 pursuant to a design-build contract.

11 (4) “Project” means the construction of a building and
12 improvements directly related to the construction of a building,
13 and county sanitation wastewater treatment facilities, but does not
14 include the construction of other infrastructure, including, but not
15 limited to, streets and highways, public rail transit, or water
16 resources facilities and infrastructure.

17 (d) Design-build projects shall progress in a four-step process,
18 as follows:

19 (1) (A) The county shall prepare a set of documents setting
20 forth the scope of the project. The documents may include, but are
21 not limited to, the size, type, and desired design character of the
22 public improvement, performance specifications covering the
23 quality of materials, equipment, and workmanship, preliminary
24 plans or building layouts, or any other information deemed
25 necessary to describe adequately the county’s needs. The
26 performance specifications and any plans shall be prepared by a
27 design professional who is duly licensed and registered in
28 California.

29 (B) Any architect or engineer retained by the county to assist
30 in the development of the project specific documents shall not be
31 eligible to participate in the preparation of a bid with any
32 design-build entity for that project.

33 (2) (A) Based on the documents prepared in paragraph (1), the
34 county shall prepare a request for proposals that invites interested
35 parties to submit competitive sealed proposals in the manner
36 prescribed by the county. The request for proposals shall include,
37 but is not limited to, the following elements:

38 (i) Identification of the basic scope and needs of the project or
39 contract, the expected cost range, and other information deemed
40 necessary by the county to inform interested parties of the

1 contracting opportunity, to include the methodology that will be
2 used by the county to evaluate proposals and specifically if the
3 contract will be awarded to the lowest responsible bidder.

4 (ii) Significant factors that the county reasonably expects to
5 consider in evaluating proposals, including cost or price and all
6 nonprice related factors.

7 (iii) The relative importance of weight assigned to each of the
8 factors identified in the request for proposals.

9 (B) With respect to clause (iii) of subparagraph (A), if a
10 nonweighted system is used, the agency shall specifically disclose
11 whether all evaluation factors other than cost or price when
12 combined are:

13 (i) Significantly more important than cost or price.

14 (ii) Approximately equal in importance to cost or price.

15 (iii) Significantly less important than cost or price.

16 (C) If the county chooses to reserve the right to hold discussions
17 or negotiations with responsive bidders, it shall so specify in the
18 request for proposal and shall publish separately or incorporate
19 into the request for proposal applicable rules and procedures to be
20 observed by the county to ensure that any discussions or
21 negotiations are conducted in good faith.

22 (3) (A) The county shall establish a procedure to prequalify
23 design-build entities using a standard questionnaire developed by
24 the county. In preparing the questionnaire, the county shall consult
25 with the construction industry, including representatives of the
26 building trades and surety industry. This questionnaire shall require
27 information including, but not limited to, all of the following:

28 (i) If the design-build entity is a partnership, limited partnership,
29 or other association, a listing of all of the partners, general partners,
30 or association members known at the time of bid submission who
31 will participate in the design-build contract, including, but not
32 limited to, mechanical subcontractors.

33 (ii) Evidence that the members of the design-build entity have
34 completed, or demonstrated the experience, competency, capability,
35 and capacity to complete, projects of similar size, scope, or
36 complexity, and that proposed key personnel have sufficient
37 experience and training to competently manage and complete the
38 design and construction of the project, as well as a financial
39 statement that assures the county that the design-build entity has
40 the capacity to complete the project.

1 (iii) The licenses, registration, and credentials required to design
2 and construct the project, including information on the revocation
3 or suspension of any license, credential, or registration.

4 (iv) Evidence that establishes that the design-build entity has
5 the capacity to obtain all required payment and performance
6 bonding, liability insurance, and errors and omissions insurance.

7 (v) Any prior serious or willful violation of the California
8 Occupational Safety and Health Act of 1973, contained in Part 1
9 (commencing with Section 6300) of Division 5 of the Labor Code,
10 or the federal Occupational Safety and Health Act of 1970 (P.L.
11 91-596), settled against any member of the design-build entity,
12 and information concerning workers' compensation experience
13 history and worker safety program.

14 (vi) Information concerning any debarment, disqualification,
15 or removal from a federal, state, or local government public works
16 project. Any instance in which an entity, its owners, officers, or
17 managing employees submitted a bid on a public works project
18 and were found to be nonresponsive, or were found by an awarding
19 body not to be a responsible bidder.

20 (vii) Any instance in which the entity, or its owners, officers,
21 or managing employees, defaulted on a construction contract.

22 (viii) Any violations of the Contractors' State License Law
23 (Chapter 9 (commencing with Section 7000) of Division 3 of the
24 Business and Professions Code), excluding alleged violations of
25 federal or state law including the payment of wages, benefits,
26 apprenticeship requirements, or personal income tax withholding,
27 or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec.
28 3101 et seq.) withholding requirements settled against any member
29 of the design-build entity.

30 (ix) Information concerning the bankruptcy or receivership of
31 any member of the design-build entity, including information
32 concerning any work completed by a surety.

33 (x) Information concerning all settled adverse claims, disputes,
34 or lawsuits between the owner of a public works project and any
35 member of the design-build entity during the five years preceding
36 submission of a bid pursuant to this section, in which the claim,
37 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
38 Information shall also be provided concerning any work completed
39 by a surety during this period.

1 (xi) In the case of a partnership or other association, that is not
2 a legal entity, a copy of the agreement creating the partnership or
3 association and specifying that all partners or association members
4 agree to be fully liable for the performance under the design-build
5 contract.

6 (B) The information required pursuant to this subdivision shall
7 be verified under oath by the entity and its members in the manner
8 in which civil pleadings in civil actions are verified. Information
9 that is not a public record pursuant to the California Public Records
10 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
11 of Title 1 of the Government Code) shall not be open to public
12 inspection.

13 (4) The county shall establish a procedure for final selection of
14 the design-build entity. Selection shall be based on either of the
15 following criteria:

16 (A) A competitive bidding process resulting in lump-sum bids
17 by the prequalified design-build entities. Awards shall be made to
18 the lowest responsible bidder.

19 (B) A county may use a design-build competition based upon
20 best value and other criteria set forth in paragraph (2). The
21 design-build competition shall include the following elements:

22 (i) Competitive proposals shall be evaluated by using only the
23 criteria and selection procedures specifically identified in the
24 request for proposal. However, the following minimum factors
25 shall each represent at least 10 percent of the total weight of
26 consideration given to all criteria factors: price, technical design,
27 and construction expertise, life cycle costs over 15 years or more,
28 skilled labor force availability, and acceptable safety record.

29 (ii) Once the evaluation is complete, the top three responsive
30 bidders shall be ranked sequentially from the most advantageous
31 to the least.

32 (iii) The award of the contract shall be made to the responsible
33 bidder whose proposal is determined, in writing, to be the most
34 advantageous.

35 (iv) Notwithstanding any provision of this code, upon issuance
36 of a contract award, the county shall publicly announce its award,
37 identifying the contractor to whom the award is made, along with
38 a written decision supporting its contract award and stating the
39 basis of the award. The notice of award shall also include the
40 county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, “skilled labor force availability” shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder’s “safety record” shall be deemed “acceptable” if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

1 (1) Provide public notice of the availability of work to be
2 subcontracted in accordance with the publication requirements
3 applicable to the competitive bidding process of the county.

4 (2) Provide a fixed date and time on which the subcontracted
5 work will be awarded in accordance with the procedure established
6 pursuant to this section.

7 (g) The minimum performance criteria and design standards
8 established pursuant to paragraph (1) of subdivision (d) shall be
9 adhered to by the design-build entity. Any deviations from those
10 standards may only be allowed by written consent of the county.

11 (h) The county may retain the services of a design professional
12 or construction project manager, or both, throughout the course of
13 the project in order to ensure compliance with this section.

14 (i) Contracts awarded pursuant to this section shall be valid until
15 the project is completed.

16 (j) Nothing in this section is intended to affect, expand, alter,
17 or limit any rights or remedies otherwise available at law.

18 (k) (1) If the county elects to award a project pursuant to this
19 section, retention proceeds withheld by the county from the
20 design-build entity shall not exceed 5 percent if a performance and
21 payment bond, issued by an admitted surety insurer, is required in
22 the solicitation of bids.

23 (2) In a contract between the design-build entity and the
24 subcontractor, and in a contract between a subcontractor and any
25 subcontractor thereunder, the percentage of the retention proceeds
26 withheld ~~may~~ *shall* not exceed the percentage specified in the
27 contract between the county and the design-build entity. If the
28 design-build entity provides written notice to any subcontractor
29 who is not a member of the design-build entity, prior to or at the
30 time the bid is requested, that a bond may be required and the
31 subcontractor subsequently is unable or refuses to furnish a bond
32 to the design-build entity, then the design-build entity may withhold
33 retention proceeds in excess of the percentage specified in the
34 contract between the county and the design-build entity from any
35 payment made by the design-build entity to the subcontractor.

36 (l) Each county that elects to proceed under this section and
37 uses the design-build method on a public works project shall submit
38 to the Legislative Analyst's Office before December 1, 2009, a
39 report containing a description of each public works project
40 procured through the design-build process and completed after

1 November 1, 2004, and before November 1, 2009. The report shall
2 include, but shall not be limited to, all of the following information:
3 (1) The type of project.
4 (2) The gross square footage of the project.
5 (3) The design-build entity that was awarded the project.
6 (4) The estimated and actual length of time to complete the
7 project.
8 (5) The estimated and actual project costs.
9 (6) A description of any written protests concerning any aspect
10 of the solicitation, bid, proposal, or award of the design-build
11 project, including the resolution of the protests.
12 (7) An assessment of the prequalification process and criteria.
13 (8) An assessment of the effect of retaining 5-percent retention
14 on the project.
15 (9) A description of the Labor Force Compliance Program and
16 an assessment of the project impact, where required.
17 (10) A description of the method used to award the contract. If
18 best value was the method, the report shall describe the factors
19 used to evaluate the bid, including the weighting of each factor
20 and an assessment of the effectiveness of the methodology.
21 (11) An assessment of the project impact of “skilled labor force
22 availability.”
23 (12) An assessment of the design-build dollar limits on county
24 projects. This assessment shall include projects where the county
25 wanted to use design-build and was precluded by the dollar
26 limitation. This assessment shall also include projects where the
27 best value method was not used due to dollar limitations.
28 (13) An assessment of the most appropriate uses for the
29 design-build approach.
30 (m) Any county that elects to not use the authority granted by
31 this section may submit a report to the Legislative Analyst’s Office
32 explaining why the county elected to not use the design-build
33 method.
34 (n) On or before January 1, 2010, the Legislative Analyst shall
35 report to the Legislature on the use of the design-build method by
36 counties pursuant to this section, including the information listed
37 in subdivision (l). The report may include recommendations for
38 modifying or extending this section.
39 (o) Except as provided in this section, nothing in this act shall
40 be construed to affect the application of any other law.

1 (p) This section shall remain in effect only until January 1, 2011,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2011, deletes or extends that date.

4 SEC. 4. Section 20175.2 of the Public Contract Code is
5 amended to read:

6 20175.2. (a) (1) A city, with approval of the appropriate city
7 council, may utilize an alternative procedure for bidding on
8 building construction projects in the city in excess of one million
9 dollars (\$1,000,000), except as provided in subdivision (p).

10 (2) Cities may award the project using either the lowest
11 responsible bidder or by best value.

12 (b) (1) It is the intent of the Legislature to enable cities to utilize
13 cost-effective options for building and modernizing public
14 facilities. The Legislature also recognizes the national trend,
15 including authorization in California, to allow public entities to
16 utilize design-build contracts as a project delivery method. It is
17 not the intent of the Legislature to authorize this procedure for
18 transportation facilities, including, but not limited to, roads and
19 bridges.

20 (2) The Legislature also finds and declares that utilizing a
21 design-build contract requires a clear understanding of the roles
22 and responsibilities of each participant in the design-build process.
23 The Legislature also finds that the cost-effective benefits to cities
24 are achieved by shifting the liability and risk for cost containment
25 and project completion to the design-build entity.

26 (3) It is the intent of the Legislature to provide an alternative
27 and optional procedure for bidding and building construction
28 projects for cities.

29 (4) The design-build approach may be used, but is not limited
30 to use, when it is anticipated that it will: reduce project cost,
31 expedite project completion, or provide design features not
32 achievable through the design-bid-build method.

33 (5) If a city council elects to proceed under this section, the city
34 council shall establish and enforce, for design-build projects, a
35 labor compliance program containing the requirements outlined
36 in Section 1771.5 of the Labor Code, or it shall contract with a
37 third party to operate a labor compliance program containing the
38 requirements outlined in Section 1771.5 of the Labor Code. ~~This~~
39 ~~requirement shall not apply to any project where the city or the~~
40 ~~design-build entity has entered into any collective bargaining~~

1 ~~agreement or agreements that bind all of the contractors performing~~
2 ~~work on the projects.~~

3 (c) As used in this section:

4 (1) “Best value” means a value determined by objectives relative
5 to price, features, functions, and life-cycle costs.

6 (2) “Design-build” means a procurement process in which both
7 the design and construction of a project are procured from a single
8 entity.

9 (3) “Design-build entity” means a partnership, corporation, or
10 other legal entity that is able to provide appropriately licensed
11 contracting, architectural, and engineering services, as needed,
12 pursuant to a design-build contract.

13 (4) “Project” means the construction of a building and
14 improvements directly related to the construction of a building,
15 but does not include streets and highways, public rail transit, or
16 water resource facilities and infrastructure.

17 (d) Design-build projects shall progress in a four-step process,
18 as follows:

19 (1) (A) The city shall prepare a set of documents setting forth
20 the scope of the project. The documents may include, but are not
21 limited to, the size, type, and desired design character of the
22 buildings and site, performance specifications covering the quality
23 of materials, equipment, and workmanship, preliminary plans or
24 building layouts, or any other information deemed necessary to
25 describe adequately the city’s needs. The performance
26 specifications and any plans shall be prepared by a design
27 professional who is duly licensed and registered in California.

28 (B) Any architect or engineer retained by the city to assist in
29 the development of the project-specific documents shall not be
30 eligible to participate in the preparation of a bid with any
31 design-build entity for that project.

32 (2) (A) Based on the documents prepared in paragraph (1), the
33 city shall prepare a request for proposals that invites interested
34 parties to submit competitive sealed proposals in the manner
35 prescribed by the city. The request for proposals shall include, but
36 is not limited to, the following elements:

37 (i) Identification of the basic scope and needs of the project or
38 contract, the expected cost range, and other information deemed
39 necessary by the city to inform interested parties of the contracting
40 opportunity, to include the methodology that will be used by the

1 city to evaluate proposals, and specifically if the contract will be
2 awarded to the lowest responsible bidder.

3 (ii) Significant factors which the city reasonably expects to
4 consider in evaluating proposals, including cost or price and all
5 nonprice related factors.

6 (iii) The relative importance of weight assigned to each of the
7 factors identified in the request for proposals.

8 (B) With respect to clause (iii) of subparagraph (A), if a
9 nonweighted system is used, the agency shall specifically disclose
10 whether all evaluation factors, other than cost or price, when
11 combined are:

12 (i) Significantly more important than cost or price.

13 (ii) Approximately equal in importance to cost or price.

14 (iii) Significantly less important than cost or price.

15 (C) If the city chooses to reserve the right to hold discussions
16 or negotiations with responsive bidders, it shall so specify in the
17 request for proposal and shall publish separately, or incorporate
18 into the request for proposal, applicable rules and procedures to
19 be observed by the city to ensure that any discussions or
20 negotiations are conducted in good faith.

21 (3) (A) The city shall establish a procedure to prequalify
22 design-build entities using a standard questionnaire developed by
23 the city. In preparing the questionnaire, the city shall consult with
24 the construction industry, including representatives of the building
25 trades and surety industry. This questionnaire shall require
26 information including, but not limited to, all of the following:

27 (i) If the design-build entity is a partnership, limited partnership,
28 or other association, a listing of all of the partners, general partners,
29 or association members known at the time of bid submission who
30 will participate in the design-build contract, including, but not
31 limited to, mechanical subcontractors.

32 (ii) Evidence that the members of the design-build entity have
33 completed, or demonstrated the experience, competency, capability,
34 and capacity to complete projects of similar size, scope, or
35 complexity, and that proposed key personnel have sufficient
36 experience and training to competently manage and complete the
37 design and construction of the project, as well as a financial
38 statement that assures the city that the design-build entity has the
39 capacity to complete the project.

1 (iii) The licenses, registration, and credentials required to design
2 and construct the project, including information on the revocation
3 or suspension of any license, credential, or registration.

4 (iv) Evidence that establishes that the design-build entity has
5 the capacity to obtain all required payment and performance
6 bonding, liability insurance, and errors and omissions insurance.

7 (v) Any prior serious or willful violation of the California
8 Occupational Safety and Health Act of 1973, contained in Part 1
9 (commencing with Section 6300) of Division 5 of the Labor Code
10 or the federal Occupational Safety and Health Act of 1970 (Public
11 Law 91-596) settled against any member of the design-build entity,
12 and information concerning workers' compensation experience
13 history and worker safety program.

14 (vi) Information concerning any debarment, disqualification,
15 or removal from a federal, state, or local government public works
16 project. Any instance where an entity, its owners, officers, or
17 managing employees submitted a bid on a public works project
18 and were found to be nonresponsive, or were found by an awarding
19 body not to be a responsible bidder.

20 (vii) Any instance where the entity, its owners, officers, or
21 managing employees defaulted on a construction contract.

22 (viii) Any violations of the Contractors' State License Law
23 (Chapter 9 (commencing with Section 7000) of Division 3 of the
24 Business and Professions Code), excluding alleged violations of
25 federal or state law including the payment of wages, benefits,
26 apprenticeship requirements, or personal income tax withholding,
27 or of Federal Insurance Contribution Act (FICA) withholding
28 requirements settled against any member of the design-build entity.

29 (ix) Information concerning the bankruptcy or receivership of
30 any member of the design-build entity, including information
31 concerning any work completed by a surety.

32 (x) Information concerning all settled adverse claims, disputes,
33 or lawsuits between the owner of a public works project and any
34 member of the design-build entity during the five years preceding
35 submission of a bid pursuant to this section, in which the claim,
36 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
37 Information shall also be provided concerning any work completed
38 by a surety during this period.

39 (xi) In the case of a partnership or other association that is not
40 a legal entity, a copy of the agreement creating the partnership or

1 association and specifying that all partners or association members
2 agree to be fully liable for the performance under the design-build
3 contract.

4 (B) The information required pursuant to this subdivision shall
5 be verified under oath by the entity and its members in the manner
6 in which civil pleadings in civil actions are verified. Information
7 that is not a public record pursuant to the California Public Records
8 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
9 of Title 1 of the Government Code) shall not be open to public
10 inspection.

11 (4) The city shall establish a procedure for final selection of the
12 design-build entity. Selection shall be based on either of the
13 following criteria:

14 (A) A competitive bidding process resulting in lump-sum bids
15 by the prequalified design-build entities. Awards shall be made to
16 the lowest responsible bidder.

17 (B) The city may use a design-build competition based upon
18 best value and other criteria set forth in paragraph (2) of
19 subdivision (d). The design-build competition shall include the
20 following elements:

21 (i) Competitive proposals shall be evaluated by using only the
22 criteria and selection procedures specifically identified in the
23 request for proposal. However, the following minimum factors
24 shall each represent at least 10 percent of the total weight of
25 consideration given to all criteria factors: price, technical design
26 and construction expertise, life-cycle costs over 15 years or more,
27 skilled labor force availability, and acceptable safety record. Each
28 of these factors shall be weighted equally.

29 (ii) Once the evaluation is complete, the top three responsive
30 bidders shall be ranked sequentially from the most advantageous
31 to the least.

32 (iii) The award of the contract shall be made to the responsible
33 bidder whose proposal is determined, in writing, to be the most
34 advantageous.

35 (iv) Notwithstanding any provision of this code, upon issuance
36 of a contract award, the city shall publicly announce its award,
37 identifying the contractor to whom the award is made, along with
38 a written decision supporting its contract award and stating the
39 basis of the award. The notice of award shall also include the city's
40 second and third ranked design-build entities.

(v) For the purposes of this paragraph, “skilled labor force availability” shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder’s “safety record” shall be deemed “acceptable” if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system, as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the city.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the city in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

1 (1) Provide public notice of the availability of work to be
2 subcontracted in accordance with the publication requirements
3 applicable to the competitive bidding process of the city.

4 (2) Provide a fixed date and time on which the subcontracted
5 work will be awarded in accordance with the procedure established
6 pursuant to this section.

7 (g) The minimum performance criteria and design standards
8 established pursuant to paragraph (1) of subdivision (d) shall be
9 adhered to by the design-build entity. Any deviations from those
10 standards may only be allowed by written consent of the city.

11 (h) The city may retain the services of a design professional or
12 construction project manager, or both, throughout the course of
13 the project in order to ensure compliance with this section.

14 (i) Contracts awarded pursuant to this section shall be valid until
15 the project is completed.

16 (j) Nothing in this section is intended to affect, expand, alter,
17 or limit any rights or remedies otherwise available at law.

18 (k) (1) If the city elects to award a project pursuant to this
19 section, retention proceeds withheld by the city from the
20 design-build entity shall not exceed 5 percent if a performance and
21 payment bond, issued by an admitted surety insurer, is required in
22 the solicitation of bids.

23 (2) In a contract between the design-build entity and the
24 subcontractor, and in a contract between a subcontractor and any
25 subcontractor thereunder, the percentage of the retention proceeds
26 withheld may not exceed the percentage specified in the contract
27 between the city and the design-build entity. If the design-build
28 entity provides written notice to any subcontractor who is not a
29 member of the design-build entity, prior to or at the time the bid
30 is requested, that a bond may be required and the subcontractor
31 subsequently is unable or refuses to furnish a bond to the
32 design-build entity, then the design-build entity may withhold
33 retention proceeds in excess of the percentage specified in the
34 contract between the city and the design-build entity from any
35 payment made by the design-build entity to the subcontractor.

36 (l) Each city that elects to proceed under this section and uses
37 the design-build method on a public works project shall submit to
38 the Legislative Analyst's Office before December 1, 2014, a report
39 containing a description of each public works project procured
40 through the design-build process that is completed after January

1 1, 2011, and before November 1, 2014. The report shall include,
2 but shall not be limited to, all of the following information:

- 3 (1) The type of project.
- 4 (2) The gross square footage of the project.
- 5 (3) The design-build entity that was awarded the project.
- 6 (4) The estimated and actual project costs.
- 7 (5) A description of any written protests concerning any aspect
8 of the solicitation, bid, proposal, or award of the design-build
9 project, including the resolution of the protests.
- 10 (6) An assessment of the prequalification process and criteria.
- 11 (7) An assessment of the effect of retaining 5 percent retention
12 on the project.
- 13 (8) A description of the Labor Force Compliance Program and
14 an assessment of the project impact, where required.
- 15 (9) A description of the method used to award the contract. If
16 the best value method was used, the report shall describe the factors
17 used to evaluate the bid, including the weighting of each factor
18 and an assessment of the effectiveness of the methodology.
- 19 (10) An assessment of the project impact of “skilled labor force
20 availability.”
- 21 (11) An assessment of the most appropriate uses for the
22 design-build approach.
- 23 (m) Any city that elects not to use the authority granted by this
24 section may submit a report to the Legislative Analyst’s Office
25 explaining why the city elected not to use the design-build method.
- 26 (n) On or before January 1, 2015, the Legislative Analyst’s
27 Office shall report to the Legislature on the use of the design-build
28 method by cities pursuant to this section, including the information
29 listed in subdivision (l). The report may include recommendations
30 for modifying or extending this section.
- 31 (o) Except as provided in this section, nothing in this act shall
32 be construed to affect the application of any other law.
- 33 (p) Before January 1, 2011, the project limitation of one million
34 dollars (\$1,000,000), as set forth in subdivision (a), shall not apply
35 to any city in the Counties of Solano and Yolo, or to the Cities of
36 Stanton and Victorville.
- 37 (q) This section shall remain in effect only until January 1, 2016,
38 and as of that date is repealed, unless a later enacted statute, that
39 is enacted before January 1, 2016, deletes or extends that date.

1 SEC. 5. Section 20209.7 of the Public Contract Code is
2 amended to read:

3 20209.7. Design-build projects shall progress in a three-step
4 process, as follows:

5 (a) The transit operator shall prepare a set of documents setting
6 forth the scope of the project. The documents shall include, but
7 are not limited to, the size, type, and desired design character of
8 the buildings, transit facilities, and site, performance specifications
9 covering the quality of materials, equipment, and workmanship,
10 preliminary plans or building layouts, or any other information
11 deemed necessary to describe adequately the transit operator's
12 needs. The performance specifications and any plans shall be
13 prepared by a design professional duly licensed or registered in
14 California.

15 (b) Any architectural or engineering firm or individual retained
16 by the transit operator to assist in the development criteria or
17 preparation of the request for proposal (RFP) is not eligible to
18 participate in the competition for the design-build entity.

19 (c) If the transit operator does not already have a labor
20 compliance program, as defined in Section 1771.5 of the Labor
21 Code, the transit operator shall establish and enforce a labor
22 compliance program for the design-build contract containing the
23 requirements outlined in Section 1771.5 of the Labor Code or shall
24 contract with a third party to operate this labor compliance program
25 containing the requirements outlined in Section 1771.5 of the Labor
26 Code. This requirement applies only to the design-build contract
27 ~~and does not apply to projects where the transit operator or the~~
28 ~~design-build entity has entered into a collective bargaining~~
29 ~~agreement that binds all of the contractors performing work on the~~
30 ~~project, or to any other project of the transit operator that is not~~
31 ~~design-build.~~

32 (d) (1) Each RFP shall identify the basic scope and needs of
33 the project or contract, the expected cost range, and other
34 information deemed necessary by the contracting agency to inform
35 interested parties of the contracting opportunity.

36 (2) Each RFP shall invite interested parties to submit competitive
37 sealed proposals in the manner prescribed by the contracting
38 agency.

39 (3) Each RFP shall include a section identifying and describing:

1 (A) All significant factors that the agency reasonably expects
2 to consider in evaluating proposals, including cost or price and all
3 nonprice-related factors.

4 (B) The methodology and rating or weighting process that will
5 be used by the agency in evaluating competitive proposals and
6 specifically whether proposals will be rated according to numeric
7 or qualitative values.

8 (C) The relative importance or weight assigned to each of the
9 factors identified in the RFP. If a nonweighted system is used, the
10 agency shall specifically disclose whether all evaluation factors
11 other than cost or price, when combined, are any of the following:

12 (i) Significantly more important than cost or price.

13 (ii) Approximately equal in importance to cost or price.

14 (iii) Significantly less important than cost or price.

15 (D) If the contracting agency wishes to reserve the right to hold
16 discussions or negotiations with offerors, it shall specify the same
17 in the RFP and shall publish separately or incorporate into the RFP
18 applicable rules and procedures to be observed by the agency to
19 ensure that any discussions or negotiations are conducted in a fair
20 and impartial manner.

21 (e) (1) The transit operator shall establish a procedure to
22 prequalify design-build entities using a standard questionnaire
23 developed by the Director of Industrial Relations. The standardized
24 questionnaire may not require prospective bidders to disclose any
25 violations of Chapter 1 (commencing with Section 1720) of Part
26 7 of Division 2 of the Labor Code committed prior to January 1,
27 1998, if the violation was based on a subcontractor's failure to
28 comply with these provisions and the bidder had no knowledge of
29 the subcontractor's violations and the bidder complied with the
30 conditions set forth in subdivision (b) of Section 1775 of the Labor
31 Code. In preparing the questionnaire, the director shall consult
32 with the construction industry, building trades, transit operators,
33 and other affected parties. This questionnaire shall require
34 information relevant to the architecture or engineering firm that
35 will be the lead on the design-build project. The questionnaire
36 shall include, but is not limited to, all of the following:

37 (A) A listing of all the contractors that are part of the
38 design-build entity.

39 (B) Evidence that the members of the design-build entity have
40 completed, or demonstrated the experience, competency, capability,

1 and capacity to complete, projects of similar size, scope, or
2 complexity, and that proposed key personnel have sufficient
3 experience and training to competently manage and complete the
4 design and construction of the project.

5 (C) The licenses, registrations, and credentials required to design
6 and construct the project, including information on the revocation
7 or suspension of any license, credential, or registration.

8 (D) Evidence that establishes that the design-build entity has
9 the capacity to obtain all required payment and performance
10 bonding, liability insurance, and errors and omissions insurance,
11 as well as a financial statement that assures the transit operator
12 that the design-build entity has the capacity to complete the project.

13 (E) Any prior serious or willful violation of the California
14 Occupational Safety and Health Act of 1973, contained in Part 1
15 (commencing with Section 6300) of Division 5 of the Labor Code
16 or the federal Occupational Safety and Health Act of 1970 (P.L.
17 91-596), settled against any member of the design-build entity,
18 and information concerning a contractor member's workers'
19 compensation experience history and worker safety program.

20 (F) Information concerning any debarment, disqualification, or
21 removal from a federal, state, or local government public works
22 project. Any instance where an entity, its owners, officers, or
23 managing employees submitted a bid on a public works project
24 and were found by an awarding body not to be a responsible bidder.

25 (G) Any instance where the entity, its owner, officers, or
26 managing employees defaulted on a construction contract.

27 (H) Any violations of the Contractors' State License Law
28 (Chapter 9 (commencing with Section 7000) of Division 3 of the
29 Business and Professions Code), excluding alleged violations of
30 federal or state law, including the payment of wages, benefits,
31 apprenticeship requirements, or personal income tax withholding,
32 or of Federal Insurance Contribution Act (FICA) withholding
33 requirements settled against any member of the design-build entity.

34 (I) Information concerning the bankruptcy or receivership of
35 any member of the entity, and information concerning all legal
36 claims, disputes, or lawsuits arising from any construction project
37 of any member of the entity during the past three years, including
38 information concerning any work completed by a surety.

39 (J) If the design-build entity is a partnership, limited partnership,
40 or other association, a listing of all of the partners, general partners,

1 or association members who will participate as subcontractors in
2 the design-build contract.

3 (K) Information concerning all settled adverse claims, disputes,
4 or lawsuits between the owner of a public works project and any
5 member of the design-build entity during the five-year period
6 immediately preceding submission of a bid pursuant to this section,
7 in which the claim, settlement, or judgment exceeds fifty thousand
8 dollars (\$50,000). Information shall also be provided concerning
9 any work completed by a surety during this period.

10 (L) In the case of a partnership or other association that is not
11 a legal entity, a copy of the agreement creating the partnership or
12 association and specifying that all partners or association members
13 agree to be liable for full performance under the design-build
14 contract.

15 (2) The information required pursuant to this subdivision shall
16 be verified under oath by the entity and its members in the manner
17 in which civil pleadings in civil actions are verified. Information
18 that is not a public record pursuant to the California Public Records
19 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
20 of Title 1 of the Government Code) shall not be open to public
21 inspection.

22 (f) The transit operator shall establish a procedure for final
23 selection of the design-build entity. Selection shall be subject to
24 the following conditions:

25 (1) In no case shall the transit operator award a contract to a
26 design-build entity pursuant to this article for a capital maintenance
27 or capacity-enhancing rail project unless that project exceeds
28 twenty-five million dollars (\$25,000,000) in cost.

29 (2) For nonrail transit projects that exceed two million five
30 hundred thousand dollars (\$2,500,000), the transit operator may
31 award the project to the lowest responsible bidder or by using the
32 best value method.

33 (3) For the acquisition and installation of technology applications
34 or surveillance equipment designed to enhance safety, disaster
35 preparedness, and homeland security efforts, there shall be no cost
36 threshold and the transit operator may award the contract to the
37 lowest responsible bidder or by using the best value method.

- 1 (g) Except as provided in this section, nothing in this act shall
- 2 be construed to affect the application of any other law.

O